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UNITED STATES DISTRICT COURT
Northern District of California
Oakland Division

DANNY F. ATTERBURY,
Plaintiff,
v.
THERESE VARNEY, *et al.*,
Defendants.

No. C 11-04932 LB

**ORDER DENYING PLAINTIFF'S
REQUEST FOR COURT TO
CONSIDER IF PLAINTIFF MAY
NEED AN INJUNCTION OR
TEMPORARY RESTRAINING
ORDER TO STOP THE
RETALIATION**

[ECF No. 16]

On April 17, 2012, Plaintiff Danny Atterbury filed a letter asking the court to consider if he needs an injunction or temporary restraining order to stop purported retaliation and harassment by some of the defendants. ECF No. 16 at 3. The letter does not actually move for an injunction or temporary restraining order but, instead, appears to seek the court's advice. The court may not give a party advice on what kind of relief the party should seek. *See Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000) ("Our role is neither to issue advisory opinions nor to declare rights in hypothetical cases . . ."); *see also Pliler v. Ford*, 542 U.S. 225, 231 (2004) ("District judges have no obligation to act as counsel or paralegal to pro se litigants"). If Plaintiff believes he is entitled to an injunction or temporary restraining order, he may file a motion seeking one.

A temporary restraining order preserves the status quo and prevents irreparable harm until a

ORDER
C 11-04932 LB

1 hearing can be held on a preliminary injunction application. *See Granny Goose Foods, Inc. v.*
2 *Brotherhood of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 429 (1974). A temporary
3 restraining order is an “extraordinary remedy” that the court should award only when a plaintiff
4 makes a clear showing that it is entitled to such relief. *See Winter v. Natural Res. Defense Council,*
5 *Inc.*, 129 S. Ct. 365, 376 (2008). A temporary restraining order may be issued without providing the
6 opposing party an opportunity to be heard only if “specific facts in an affidavit or a verified
7 complaint clearly show that immediate and irreparable injury, loss, or damage will result to the
8 movant before the adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A).

9 The standards for a temporary restraining order and a preliminary injunction are the same. *See*
10 *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).
11 A plaintiff must demonstrate (1) a likelihood of success on the merits, (2) a likelihood of irreparable
12 harm that would result if an injunction were not issued, (3) the balance of equities tips in favor of the
13 plaintiff, and (4) an injunction is in the public interest. *See Winter*, 129 S. Ct. at 376. The
14 irreparable injury must be both likely and immediate. *See id.* at 374-75; *Caribbean Marine Services*
15 *Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (“a plaintiff must demonstrate immediate
16 threatened injury as a prerequisite to preliminary injunctive relief”).

17 The Americans with Disabilities Act (“ADA”) provides: “No person shall discriminate against
18 any individual because such individual has opposed any act or practice made unlawful by this
19 chapter or because such individual made a charge, testified, assisted, or participated in any manner
20 in an investigation, proceeding, or hearing under this chapter.” 42 U.S.C. § 12203(a). A plaintiff
21 must establish the following three elements to state a retaliation claims under the ADA: 1) that the
22 plaintiff engaged in statutorily protected activity; 2) that the plaintiff suffered an adverse action; and
23 3) that the adverse action was causally related to the protected activity. *See Coons v. Sec'y of U.S.*
24 *Dep't Treasury*, 383 F.3d 879, 887 (9th Cir. 2004).

25 The court **DENIES** Plaintiff’s request to consider if he needs an injunction or temporary
26 restraining order because the role of the court is not to act as a legal counselor for a party. If Plaintiff
27 files a motion for an injunction or temporary restraining order, it will be evaluated according to the
28 standard described above. Additionally, the court separately issues its standard order for litigants

1 without a lawyer. That order describes resources that may be useful to Plaintiff.

2 **IT IS SO ORDERED.**

3 Dated: April 20, 2012

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5 LAUREL BEELER
6 United States Magistrate Judge
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